Competition Compliance 2021

Contributing editor
Peter Crowther

LEXOLOGY
Getting The Deal Through

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager
Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

First published 2017
Fifth edition
ISBN 978-1-83862-636-5

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Competition Compliance 2021

Contributing editor
Peter Crowther
Winston & Strawn LLP

Lexology Getting The Deal Through is delighted to publish the fifth edition of *Competition Compliance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Australia, China, the European Union, Italy and Ukraine.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Peter Crowther of Winston & Strawn LLP, for his continued assistance with this volume.

LEXOLOGY
Getting The Deal Through

London
April 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in May 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Turkey

M Fevzi Toksoy, Bahadir Balki, Ertuğrul Can Canbolat and Caner K Cesit

Actecon

LEGAL AND REGULATORY FRAMEWORK

Key legislation

1 | What key legislation governs competition in your jurisdiction?

Law No. 4054 on the Protection of Competition (the Competition Law) has been in force since 1994 and governs competition in Turkey. The Board of the Turkish Competition Authority (TCA) has issued block exemption communiqués covering vertical restraints, research and development agreements, specialisation agreements and technology transfer agreements. Moreover, the motor vehicles and the insurance sectors have sector-specific block exemption communiqués. The TCA has published regulations and guidelines as well.

Enforcement

2 | Which authorities are charged with enforcing competition law in your jurisdiction and what is the extent of their powers?

The TCA was established in 1997. The Board is the decision-making body of the TCA. The Board of the TCA is vested with special power to enforce the competition rules regarding restrictive practices, abuse of dominance and mergers as well as drafting and enacting secondary legislation (ie, regulations and communiqués) as to the implementation of the Competition Law, providing opinions on amendments to be made to the legislation with regard to the competition law, and monitoring legislation, practices, policies, and measures of the other countries concerning agreements and decisions limiting competition.

Consequences of non-compliance

3 | What are the consequences of non-compliance with competition law?

As per article 16(3) of the Competition Law, undertakings, or associations of undertakings that commit behaviour prohibited in article 4 of the Competition Law (which is the equivalent of article 101(1) of the Treaty on the Functioning of the European Union) can be subject to administrative fines of up to 10 per cent of annual gross revenue generated by the end of the financial year preceding the decision, or the financial year closest to the date of the decision if the previous year's results cannot be used. The fine is determined by the Board of the TCA.

Article 16(4) of the Competition Law provides that managers or employees of undertakings or associations of undertakings who are found to have had a decisive influence on the violation may be fined up to five per cent of the fine given to the violating undertakings, or associations of undertakings, pursuant to article 16(3).

The Board of the TCA takes the characteristics of the violation into account when determining the percentage of the fine to be imposed, and thus the consequences of an infringement depend on the facts of the specific behaviour. However, the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (Regulation on Fines) set forth that the Board of the TCA is entitled to impose a base fine of:

- between 2 per cent and 4 per cent for cartels; and
- between five per thousand and 3 per cent for other violations of the undertaking's turnover.

After reviewing the mitigating and aggravating factors, the Board of the TCA is entitled to increase the fine's percentage up to a maximum 10 per cent of the company's turnover achieved within the previous year.

Mitigating factors include:

- providing assistance to the investigation of the violation beyond the fulfilment of legal obligations;
- that the undertaking was encouraged by public authorities or coerced by other undertakings into taking part in the violation;
- the voluntary payment of damages to those harmed;
- the termination of other violations; and
- the violation only affected a very small share within annual gross revenues.

Aggravating factors include:

- recidivism of the violation;
- maintaining the cartel after the notification of the investigation decision;
- not meeting the commitments made for the elimination of the competition problems within the scope of articles 4 or 6 of the Competition Law;
- providing no assistance with the investigation into the violation; and
- coercing other undertakings to take part in the violation.

Guidance

4 | Do the authorities issue guidance on compliance with competition law?

The TCA welcomes and encourages the competition compliance efforts of undertakings. A competition compliance programme (CCP) is regarded by the TCA as an indicator of good faith and stands out as an effective tool in complying with competition law.

In 2011, the TCA announced the standards for compliance programmes on its website through the document titled 'Competition Law Compliance Programme'. The document aims to provide undertakings with clarification to a certain extent on the issues and concepts of competition compliance, such as the purpose and scope of CCPs, checklists for compliance with competition legislation, the content of CCPs, corporate guides, training, regular assessment and monitoring of CCPs, and supportive practices. The document assists and provides insight to all undertakings in the process of developing their own CCPs. It has largely been inspired by EU competition law and provides advice to local businesses with structured requirements to ensure that their CCP is

sound and workable. Guidelines, employee responsibility, a confidential hotline, sanctioning or rewarding mechanisms, and regular reporting are among the 'must-have' features listed in the document.

Other legislation and relevant practices

5 | Do any other laws outside the main competition legislation regulate competition in your jurisdiction, including any sector-specific regimes? Do they cover any other anticompetitive practices not caught by the main legislation?

Regulations that apply to the regulated markets (eg, energy and telecommunications) do not definitively exclude the application of competition rules on possible anticompetitive behaviour in event of sector-specific regulations and the competition rules overlapping. However, behaviour that contradicts sector-specific regulation will be analysed in the context of the sector-specific regulation, even if it is a conduct that can be investigated under the Competition Law. A behaviour arising from the requirements of another law may not be viewed as an infringement of the Competition Law.

COMPLIANCE PROGRAMMES

Commitment to competition compliance

6 | How does a company demonstrate its commitment to competition compliance?

A company may demonstrate its commitment to competition compliance through the meaningful and effective implementation of a competition compliance programme (CCP) that contains the following procedures:

- the establishment of regular dawn raid simulations and training sessions for current and future employees;
- drawing up a general checklist for all employees or departments according to their position and workflow;
- reviews and assessments of past and current practices in light of competition rules;
- the appointment of an in-house compliance officer or an external consultant responsible for the implementation of the CCP and allocation of the tasks;
- the receipt of written commitments from employees with regard to the fulfilment of their responsibilities in line with the Competition Law;
- the adoption and implementation of disciplinary actions for employees' breaches of the Law No. 4054 on the Protection of Competition (the Competition Law) or the CCP; and
- the execution of an incentive system (eg, a helpline or hotline) that encourages employees to inform the relevant person in charge, and rewards employees who contribute to the detection in advance and prevent a potential violation.

Furthermore, to increase their compliance levels, companies may prefer to design a technological infrastructure enabling them to detect communications that raise competition law concerns. The infrastructure may require a list of keywords that must be designed and updated in line with the structure of the relevant market.

In particular, the undertaking's management showing that the CCP and compliance have their complete support is a significant factor in developing a culture of compliance among team members.

Government compliance standards

7 | Is there a government-approved standard for compliance programmes in your jurisdiction?

There is no government-approved standard for compliance programmes in Turkey.

Risk identification

8 | What are the key features of a compliance programme regarding risk identification?

The CCP helps in identifying risks (legal, financial and reputational) by outlining simple and clear 'dos and don'ts' lists for employees and management. Risk identification entails at least the following essential features:

- conducting market research, paying special attention to the recent decisions of the Board of the Turkish Competition Authority (TCA);
- familiarisation with the structure of the markets in which the company operates and the competition law concerns in those markets; and
- keeping track of past and current competition law investigations in Turkey and abroad.

Risk assessment

9 | What are the key features of a compliance programme regarding risk assessment?

A risk assessment process would typically start with a meeting of the companies' management regarding the identification of risky areas that may be associated with the companies' practices. The following actions are also significant:

- the enhancement of communications with employees on the risks related to anticompetitive practices;
- a review of companies' agreements or practices (eg, exclusivities, pricing policies, non-compete obligations, duration and potential impact on the market);
- an assessment of companies' activities, along with their affiliates' practices and current and future business channels from the perspective of both the product and the territorial scope;
- categorisation of the identified risks in accordance with the priority level (ie, low, medium or high); and
- the preparation and presentation of a report focusing on the main findings and risk mitigation strategies.

An appointed compliance officer or an established compliance department should monitor and oversee the risk assessment process.

A company's method of handling findings that are deemed sensitive from a competition law perspective is key to this process as it indicates a company's devotion to its compliance efforts. The CCP documents published by the TCA encourage businesses to end infringing practices and notify the competent authorities.

Risk mitigation

10 | What are the key features of a compliance programme regarding risk mitigation?

Risk mitigation typically involves monitoring, reporting and training protocols, namely:

- dawn raid simulations, which entail both a review of communications and a brief educational session for employees about how the TCA's dawn raids can be dealt with;
- general competition law training, which includes, among other things, sector-specific examples of how competition rules may be encountered in daily practice;
- a CCP report, which consists of a strengths, weaknesses, opportunities, and threats;
- analysis; and
- a helpline or hotline through which employees may request advice from a competition law perspective and inform a person in charge of a potential violation.

Employees making written commitments to carry out their activities in compliance with the CCP may also be useful in increasing their awareness.

Furthermore, regular assessment of the compliance level by competition law consultants and updating of the CCP (eg, on the basis of amendments to the applicable laws and developments in the TCA's approach) are essential. The participation of the company's competition law consultants in the company's executive meetings or meetings of the association of which the company concerned is a member, or those including consultants' evaluations on the agenda of those meetings, will also be beneficial in minimising any risks associated with competition rules.

If the management becomes aware of a potential infringement of the competition rules, it should immediately end the violating practice, comprehensively assess the case and inform the TCA if necessary (a leniency application or full active cooperation with the TCA may be considered for eliminating or minimising the risk of facing a fine).

Compliance programme review

11 | What are the key features of a compliance programme regarding monitoring and review of business practices?

A review encompasses features such as:

- assessing the level of competition law awareness of employees (eg, through monitoring employees' activities with or without a prior notice); and
- amending the CCP rules and procedures in line with developments in the competition law.

Regular simulations of dawn raids (particularly conducted without notice) by competition law consultants are essential in ensuring employees' compliance with competition rules and in assessing the established compliance culture.

Effect on penalties

12 | Will an established competition compliance programme have any effect on penalties?

The Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (Regulation on Fines) provides a non-exhaustive list of aggravating and mitigating factors that apply to the assessment of a fine's amount. The implementation of a CCP is not listed among them. The TCA's practice shows that, although CCPs are encouraged (and in some cases may be regarded as the undertaking's endeavour to act in compliance with competition law or accepted as a behavioural remedy in merger cases), the mere existence of a CCP cannot be regarded as the sole indicator of an undertaking's compliance with competition law. Moreover, as referred to in the *Industrial Gas* and *Banking* decisions, the TCA stated that the mere presence of a CCP does not constitute a mitigating factor in the determination of the amount of administrative monetary fines. Therefore, having a CCP will not de jure affect fines to be imposed by the TCA; however, a CCP may have a positive influence on the TCA in the course of its evaluations regarding the infringement allegation.

In its *Unilever* decision No. 12-42/1258-410 in 2012, the TCA showed a positive approach to Unilever's competition compliance efforts. During dawn raids as part of the investigation into alleged exclusivity practices in the ice cream market, the TCA found a document with reference to Unilever's CCP and regular competition law training. The existence and content of the document illustrated Unilever's endeavour to act in compliance with competition law, and to some extent served as grounds for the TCA's decision not to initiate a fully-fledged investigation. The TCA took similar approaches in its *Efes* decision No. 12-38/1084-343 in 2012 and its *Frito Lay* decision No. 13-49/711-300 in 2013, emphasising that CCPs constitute one of the TCA's significant requirements, however, the mere existence of CCPs cannot be regarded as a sole indicator of an undertaking's compliance with competition rules.

HORIZONTAL DEALINGS

Arrangements with competitors

13 | How does competition law govern arrangements with competitors?

Arrangements between competitors are more likely to attract the attention of the Turkish Competition Authority (TCA) regardless of their object or effect. Law No. 4054 on the Protection of Competition (the Competition Law) prohibits agreements that restrict competition either by object or by effect. In this context, agreements are defined very broadly regardless of the form or whether the parties explicitly or tacitly agree. The most common examples of anticompetitive agreements are cartels involving setting prices, restricting output, allocating markets or customers, or bid rigging.

Additionally, the direct or indirect exchange of competition-sensitive information (such as sales conditions, pricing policies, customers, production levels and capacity) is also considered to be in the scope of the aforementioned prohibition as it reduces or removes uncertainty regarding the current or future behaviour of competitors.

Therefore, any communication or business with a competitor shall carefully be carried with the assistance of competition law consultants of the undertaking concerned.

Exchanging information

14 | Can a company exchange information with its competitors?

Exchanges of competition-sensitive information among rivals may be deemed anticompetitive under certain circumstances. (Undertakings carrying out such behaviour may also be considered to be cartels, if their objective is to fix prices or quantities).

Commercial information (eg, prices, quantities, customers, costs, turnover, sales, purchases, capacities, product characteristics, marketing plans, risks, investments, technologies, and research and development programmes) are considered to be competition-sensitive.

Exchanges of aggregated data (when it is sufficiently difficult to identify individual data of a particular undertaking) or historical data (as opposed to current or future data) are much less likely to lead to a competition concern.

An undertaking may exchange information with its competitors if the exchange leads to efficiency gains that are passed on to consumers and outweigh the restrictive effects on competition.

The framework for information exchange among competitors is also shaped by the many precedents of the TCA in different industries and forms. These detailed precedents are the outcome of negative clearance and exemption applications to the TCA (which have mostly been submitted by industry associations).

Cartel behaviour

15 | What form must behaviour take to constitute a cartel?

Cartels are normally defined as agreements restricting competition or concerted practices between competitors involving fixing prices, allocating customers, providers, territories or trade channels, restricting the amount of supply or imposing quotas, and bid rigging (as listed under the Regulation on Fines and the Regulation on Active Cooperation for Detecting Cartels (Leniency Regulation)).

According to the Guidelines on Horizontal Cooperation Agreements by the TCA, the exchange of competition-sensitive information among rivals (eg, prices, output or sale amounts) is also generally considered as cartel conduct if this action is aimed at fixing prices, quantities or both. On the other hand, there are precedents whereby the exchange of such information was not deemed to be cartel conduct and was categorised under other infringements.

In practice, cartels are very unlikely to be formed in writing. Any act or concerted action between competitors preventing or restricting competition, including any (even unsuccessful) attempts to run a cartel shall be regarded as a cartel if there is sufficient evidence of a solid intention to commit to the action. The issue of whether an anticompetitive agreement has (fully or partially) been implemented may only be relevant in determining the gravity of the fines to be imposed on the parties, rather than whether article 4 of the Competition Law (which is the equivalent of article 101(1) of the Treaty on the Functioning of the European Union) has been violated.

Suggested precautions

16 What precautions can be taken to manage competition law risk when the company enters into an arrangement with a competitor?

The following precautions may be taken:

- informing the internal compliance officer in charge or external competition law experts;
- reviewing and assessing the concerned arrangement from a competition law perspective;
- avoiding exchanges of sensitive information and attending any meeting with competitors (especially without a pre-examination of the agenda) during this process;
- preparing meeting notes and clearly identifying the issues that have been discussed with competitors;
- assessing the level of the risk associated with the concerned arrangement; and
- applying to the TCA for negative clearance or an exemption.

Exemptions and defences

17 What exemptions, defences or other circumstances will allow otherwise anticompetitive agreements with competitors to escape sanction?

Cartels may be exempted from sanctions following the leniency application if certain conditions under the Leniency Regulation are satisfied. In those cases, the lenient party may benefit either from full immunity or from a reduction in fines.

Applying for leniency is possible until the investigation report by the TCA is served. The first undertaking to submit its application along with the evidence disclosing a cartel, before the investigation report is served, may benefit from full immunity unless the applicant coerced other undertakings to participate in the cartel. All subsequent applicants for leniency may only benefit from a reduction in fines. In this context, active cooperation with the TCA should last until its final decision and, thus, is indispensable.

Accordingly, the leniency applicant shall:

- immediately end its involvement in the cartel (except when the assigned unit on the ground requests otherwise, for example, if detecting the cartel would be complicated);
- submit information and evidence in respect of the cartel, including:
- all types of books, documents, information and other resources that may be used to substantiate the meetings concerning the cartel, including invoices, notes, organisers, meeting minutes, internal and external letters, travel records, reports, working texts, tables, electronic records, computer printouts, credit card statements, and detailed phone records; and
- products affected by the cartel, duration of the cartel, names of the undertakings participating in the cartel, dates, locations and the participants of cartel meetings;
- keep its application confidential;
- actively cooperate with the TCA throughout the entire procedure and in line with the TCA's instructions; and
- not conceal or destroy information or evidence related to the alleged cartel.

VERTICAL DEALINGS

Vertical agreements

18 How does competition law govern vertical arrangements with commercial partners?

Article 4 of Law No. 4054 on the Protection of Competition (the Competition Law) is the equivalent of article 101(1) of the Treaty on the Functioning of the European Union. It sets forth the main rules governing the horizontal and vertical relations between the undertakings and prohibits any agreement, decision and practice preventing, distorting or restricting competition in the relevant markets. Vertical agreements mean agreements concluded between two or more undertakings operating at different levels of the production or distribution chain, with the aim of purchasing, selling or reselling particular goods or services.

Exemptions and defences

19 What exemptions, defences or other circumstances will allow otherwise anticompetitive vertical agreements or restrictions to escape sanction?

Vertical agreements, which enable undertakings to establish the production and distribution process in the best possible way and which, as a result, ensure an increase in inter-brand competition in the market, are among the main groups of agreements that should be exempt from the prohibition of article 4 of the Competition Law.

Vertical arrangements may be exempted from sanctions if they fall within the scope of one of the relevant block exemption communiqués, namely those on vertical agreements, research and development agreements, vertical agreements and concerted practices in the motor vehicles sector, the insurance sector, and technology transfer agreements. Alternatively, an individual assessment of the exemption under article 5 of the Competition Law shall be conducted.

In terms of the individual exemption, the arrangement must:

1 ensure new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services;
2 consumers must also benefit the consumer from them;
3 not eliminate competition in a significant part of the relevant market; and
4 not limit competition by more than what is required for achieving the goals set out in (1) and (2).

If there is uncertainty on which of the exemptions could be granted, it is highly recommended to approach the TCA to avoid any risk of being fined.

In its decision No. 17-01/12-4 taken in 2017, the Turkish Competition Authority (TCA) fined Booking.com approximately 2.5 million lira for violating the Competition Law for its 'best price guarantee' and most-favoured-nation (MFN) practices. It was found that agreements (particularly MFN clauses) concluded between Booking.com and accommodation facilities were outside the scope of the Block Exemption Communiqué on Vertical Agreements, owing to the market

share threshold. An individual exemption could not be granted either as the practices did not meet the exemption conditions set out by article 5 of the Competition Law.

DOMINANT POSITION

Determining dominant market position

20 Which factors does your jurisdiction apply to determine whether a company holds a dominant market position?

The following factors are applied by the Turkish Competition Authority (TCA) to determine if a company holds a dominant position:

- the market shares of the undertaking concerned and its competitors (the TCA's established practice is to consider undertakings with less than 40 per cent of the market share as less likely to be dominant);
- barriers to entry and expansion in the relevant market;
- legal and administrative barriers;
- economic barriers;
- barriers stemming from the characteristics of the undertaking in question (eg, possession of key inputs and access to special information);
- conduct in the market (eg, large-scale investments, which existing or potential competitors would have to match); and
- buying power.

Abuse of dominance

21 If the company holds a dominant market position, what forms of behaviour constitute abuse of market dominance?

The following behaviour may constitute abuse of market dominance:

- excessive or predatory pricing and complicating competitors' activities via pricing policy;
- price or margin squeezing;
- tying;
- rebates;
- exclusivity or single branding arrangements;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby discriminating;
- limiting production, markets or technical development to the prejudice of consumers;
- restricting or cutting off the supply of goods to customers or competitors without reasonable grounds;
- preventing other undertakings from entering into the market and complicating their activities in the market by using financial, technological or IP superiority in a market; and
- most-favoured customer (MFC) practices.

This list is not exhaustive. The basis of the evaluation by the TCA in this respect is whether the behaviour of the dominant undertaking leads to actual or potential anticompetitive foreclosure.

The TCA's decision No. 16-20/347-156 taken in 2016 in relation to the popular Turkish online food-ordering platform Yemeksepeti stated that the undertaking abused its dominant position because of its MFC clauses, which prevented competitors from providing better or different conditions (eg, prices, discounts, promotions, menus, payment options and delivery regions), as well as preventing advertisements of competing platforms by offering promotions to restaurants in return for refusing to work with competing platforms. The undertaking was fined 427,977 lira and was ordered to remove MFC clauses from the agreements.

The TCA's decision No. 17-07/84-34 taken in 2017 in relation to the rakı (a traditional alcoholic drink) producer Mey İçki is another example of abuse of dominance. Providing financial benefits in relation to the shelf positioning and product layout of the rakı category within the traditional channel sales points and loyalty rebates, in addition to other practices, were deemed as exclusionary. The company was fined 155,782,969 lira, corresponding to 4.2 per cent of Mey İçki's turnover (the fourth largest fine imposed on a company in Turkey). The decision lists in detail a number of actions that the dominant company needs to undertake or refrain from.

The TCA determined another abuse of dominance in decision No. 17-08/99-42 in 2017 in relation to the branded sunglasses wholesaler Luxottica. Luxottica was fined 1,672,647 lira for abuse of dominance through practices foreclosing the market to its competitors.

The TCA published its decision No. 18-06/101-52 in February 2018 in relation to the electricity sector and imposed a total fine of 38 million lira on the following undertakings for abuse of dominance: Akdeniz Elektrik Dağıtım AŞ, an electricity distribution company in the Mediterranean region, and Akdeniz Elektrik Perakende Satış AŞ, an incumbent retail electricity sales company that is under the same control structure as the distribution company.

In its decision No. 18-36/584-285 of 1 October 2018, the TCA fined Sahibinden.com (an online platform service provider) 10,680,425.98 lira for abuse of dominance via excessive pricing in the markets for online platform services for real estate sales and rentals and online platform services for vehicle sales. However, this decision was annulled by the Sixth Chamber of Ankara Administrative Court on the basis that the TCA should conduct a thorough analysis of the substitutability, the market structure, the level of competition in the digital markets and welfare standards as well as the cost price. The Court further referred to the Council of State with regard to the standard of proof and emphasised that any violation should be based on proof that is explicit and beyond any doubt.

The TCA delivered two abuse of dominance decisions that are both related to the economic integrity comprising Google LLC, Google International LLC and Google Reklamcılık ve Pazarlama Ltd Şti (Google). In its *Android* decision No. 18-33/555-273 in September 2018, the TCA imposed an administrative fine amounting to 93,083,422.30 lira on the basis that Google abused its dominant position by tying Android with its search and WebView services as well as concluding agreements (revenue share agreements) with device manufacturers to incentivise the exclusive usage of those services. Google was also required to comply with a set of obligations to end Google's anticompetitive conduct within six months. Subsequently, Google made two submissions (a general draft of the measures to be taken to eliminate the infringing conducts and a compliance package); however, the TCA concluded in its decision No. 19-38/577-245 on 7 November 2019 that Google's compliance package was not sufficient for the fulfilment of its obligations and to be fully compliant with competition rules. Accordingly, the TCA decided to impose a daily fine of 0.05 per cent of the tech company's turnover generated in Turkey, starting from the end of the six-month period. Google was obliged to pay daily fines until it meets all the obligations fully. In this context, Google submitted a revised compliance package (on 25 December 2019 and 6 January 2020), which has been deemed sufficient to meet the obligations referred to in the *Android* decision No. 18-33/555-273. That said, the TCA has not refrained from imposing a daily fine for the period between 7 November 2019 and 6 January 2020 (60 days) in its decision No. 20-03/30-13 of 9 January 2020.

Lastly, in its decision No. 20-10/119-69 in February 2020, the TCA decided to impose an administrative fine amounting to 98,354,027.39 lira on Google for its abuse of its dominant position in the general search services market and comparison shopping market by placing its competitors' shopping comparison services in a disadvantaged position, complicating the activities of its competitors, and distorting competition in the shopping comparison services market.

Exemptions and defences

22 | What exemptions, defences or other circumstances will allow a dominant company's otherwise abusive conduct to escape sanction?

In the application of article 6 of the Competition Law, the TCA will take into consideration any claims put forward by a dominant undertaking that its conduct is justified. Claims of justification examined by the TCA may be classified under the categories of objective necessity and efficiency.

When assessing an objective necessity justification, the TCA will first see whether the conduct protects a legitimate benefit and whether the conduct is indispensable for achieving the relevant benefit. As well, in order to consider the examined conduct objectively necessary, this conduct of the dominant undertaking must be caused by external factors (such as health and safety requirements set out by relevant public authorities) and the undertaking must not restrict competition more than necessary when protecting the benefit in question. The burden of proof for demonstrating that the conduct under examination is indispensable for protecting a legitimate benefit lies with the dominant undertaking.

MERGER CONTROL

Competition authority approval

23 | Does the company need to obtain approval from the competition authority for mergers and acquisitions? Is it mandatory or voluntary to obtain approval before completion?

The Turkish Competition Authority (TCA) must be notified of concentrations between undertakings that will lead to a lasting change of control and that exceed certain turnover thresholds.

'Control', which could be acquired on a de jure or de facto basis, is defined as the possibility of exercising decisive influence on an undertaking through rights, agreements or any other means. The control could be taken solely or jointly. If one of the following turnover thresholds is exceeded in a transaction involving a permanent change of control, the transaction must be notified to the TCA:

- the total Turkish turnover of the transaction parties exceeds 100 million lira, and the Turkish turnover of at least two of the parties separately exceeds 30 million lira; or
- the Turkish turnover of the assets or businesses being acquired in acquisition transactions and of at least one of the parties in merger transactions exceeds 30 million lira, and the worldwide turnover of the other party exceeds 500 million lira.

The average buying exchange rate of the Central Bank of Turkey for the financial year in which the turnover is generated is taken into consideration in the calculation of the turnover.

For the purpose of calculating turnovers, transactions executed between the same persons, parties or undertakings or by the same undertaking in the same relevant product market (creeping acquisitions) are considered to constitute a single transaction if they are realised within three years.

Article 8 of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Authorisation of the Competition Board establishes that the calculation of turnovers must be based on net sales, whereas article 9 prescribes specific rules regarding the calculation of financial institutions' turnovers, including banks and insurance, factoring and financial leasing companies. The parties to the concentration or their representatives can file the notification jointly or separately. If separately, the notifying party must inform the other party a notification has been issued.

Timing

24 | How long does it normally take to obtain approval?

The TCA's review procedure consists of two stages: a preliminary review (Phase I) and an investigation (Phase II).

Phase I consists of a preliminary review that lasts one to two months. The Board of the TCA may either approve the concentration or order further investigation into the transaction at the end of Phase I. Following receiving the notification, the TCA will begin a preliminary examination within 15 calendar days, after which it will decide to clear the transaction or to further examine its possible effects by initiating a Phase II investigation. Within the 15-calendar day period, the TCA may request information from the transaction parties or third parties. The 15-calendar day period restarts following the receipt of the requested information.

If the Board of the TCA does not issue a notification about its decision nor take any action with regard to the notified transaction within 30 calendar days of the notification date, it is considered to have implicitly approved the transaction. In practice, a Phase I review generally takes one month to clear transactions.

A Phase II investigation is initiated if the notified transaction would result in a significant reduction of effective competition within a market for goods or services in the entirety or a portion of Turkey, particularly in the form of creating or strengthening a dominant position. A notification that a Phase II review is to be carried out is sent to the parties involved within 15 calendar days following such a decision. The parties then have 30 calendar days to submit their first written defence. The TCA must issue its Phase II report within six months (which is extendable for another six months) after initiating a Phase II investigation. In practice, the TCA generally issues Phase II reports within the first six months.

After receiving a Phase II report, parties have 30 calendar days (extendable by 30 calendar days) to submit a second written defence. The TCA issues its additional opinion within 15 days of receiving the second written defence. The parties may respond to the additional opinion within 30 calendar days, and this closes the investigation stage.

Unless an oral hearing is held, the Board of the TCA renders its decision within 30 calendar days (extendable for another calendar 30 days) from the conclusion of the investigation stage. The Board of the TCA generally decides whether a Phase II transaction shall be cleared or not within a year of a transaction being notified of the investigation. In this regard, the best timing for filing a notification depends on the specific circumstances and conditions of the transaction.

Impact of merger clearance

25 | Does merger clearance by the authority constitute confirmation that the terms in the documents comply with competition law?

The TCA's clearance also covers ancillary restrictions that are proportionate, directly related and necessary for the concentration, and only restrict the parties involved (eg, non-compete, confidentiality and non-solicitation clauses). If, following the clearance, the restraints are found not to be directly related and necessary, the company concerned may face an investigation.

Exchanging information before completion

26 | Are there limits on the information that can be exchanged with the other party before completion of a merger?

Although there is no specific limitation, the sharing of competitively sensitive information before approval might be considered an element of gun-jumping.

Failure to file

27 What are the consequences for failure to file, delay in filing and incomplete filing? Have there been any notable recent cases?

The amount of an administrative fine for failing to file or delaying in filing varies depending on whether the transaction is found to result in a significant reduction of effective competition within a market for goods or services in the entirety or a portion of the country, particularly in the form of creating or strengthening a dominant position. If the result is a significant reduction, a fine of up to 10 per cent of the turnover generated by the end of the preceding fiscal year is issued. If there is no significant reduction, a fine of 0.1 per cent of the turnover generated by the end of the preceding fiscal year is issued.

Executives and employees of the undertakings concerned who played a decisive role in the violation of the standstill obligation may also face fines of up to 5 per cent of the fine imposed on the undertaking employing them. If the TCA is not notified of a transaction that is subject to its authorisation and it violates article 7 of the Law No. 4054 on the Protection of Competition (the Competition Law), the Board of the TCA will order the concerned transaction to be terminated and the situation prior to the transaction to be restored. In this regard, the Board of the TCA is empowered to:

- order the return of all the seized assets within a certain time period or, if this is not possible, the assignment and transfer to third parties of the seized assets;
- prohibit the acquiring persons from taking part in the management of the acquired undertakings until the assignment of the seized assets; and
- take any other measure deemed necessary.

The fine is imposed on both parties in mergers and on the acquirer in acquisitions. In transactions in which a joint venture is established, all parties are deemed as acquirers, and fines are imposed accordingly.

Examples of the TCA's decisions with regard to the closing of the transaction before the submission of notification or failure to do so are as follows:

- *Total/Cepsa* decision No. 06-92/1186-355 in 2006;
- *CVR Inc/Inco Ltd* decision No. 07-11/71-23 in 2007;
- *Tekno İnşaat* decision No. 12-08/224-55 in 2012;
- *DSG European Investment Ltd* decision No.13-50/717-304 in 2013; and
- *Labelon Group/A-Tex Holding* decision No. 16-42/693-311 in 2016.

JOINT VENTURES

Competition authority approval

28 Are joint ventures required to seek clearance from the competition authority?

The formation of a joint venture that would permanently fulfil all of the functions of an independent economic entity constitutes an acquisition transaction, and the undertakings involved are required to seek clearance for the transaction from the Turkish Competition Authority if the relevant turnover thresholds will be exceeded.

Joint venture arrangements

29 When will joint venture arrangements fall within the scope of competition law?

The full-functionality criterion is the basic requirement for the application of the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board on joint ventures established by the parties in cases where the joint venture is created as a greenfield operation or the parties contribute assets to the joint venture which they previously owned individually. In other words, in these circumstances, the joint venture must fulfil the full-functionality criterion in order to constitute a transaction under article 7 of Law No. 4054 on the Protection of Competition (the Competition Law). In order to be considered full-function, a joint venture must have the following characteristics:

- have sufficient resources to operate independently;
- the ability to undertake activities beyond one specific function for the parents;
- independence from the parent companies in sales and purchase activities; and
- operate on a lasting basis.

A non-full-function joint venture agreement might be considered to be under the scope of article 4 of the Competition Law (Article 4 is the equivalent of article 101(1) of the Treaty on the Functioning of the European Union).

LENIENCY

Leniency programmes

30 Is a leniency programme available to companies or individuals who participate in a cartel or other anticompetitive conduct in your jurisdiction?

Cartels may be exempted from sanctions following an undertaking's application for leniency if certain conditions under the Regulation on Fines and the Regulation on Active Cooperation for Detecting Cartels (the Leniency Regulation) are satisfied. In those cases, the lenient party may benefit either from full immunity or from a reduction in fines.

A leniency application may be made at any time before the investigation report by the Turkish Competition Authority (TCA) is served. The first undertaking to submit its application along with the evidence disclosing a cartel, before the investigation report is served, may benefit from full immunity unless it coerced other undertakings into participating in the cartel. All subsequent applicants for leniency only benefit from a reduction in fines. In this context, an undertaking should actively cooperate with the TCA until the authority's final decision is made, thus making it indispensable.

Accordingly, the leniency applicant should:

- immediately end its involvement in the cartel (except when the assigned unit on the ground requests otherwise, for example, if detecting the cartel would be complicated);
- submit information and evidence in respect of the cartel, including:
  - all types of books, documents, information and other resources that may be used to substantiate the meetings concerning the cartel, including invoices, notes, organisers, meeting minutes, internal and external letters, travel records, reports, working texts, tables, electronic records, computer printouts, credit card statements and detailed phone records; and
  - products affected by the cartel, duration of the cartel, names of the undertakings participating in the cartel, dates, locations and the participants of cartel meetings; and
- keep its application confidential;
- actively cooperate with the TCA throughout the entire procedure and follow the TCA's instructions; and
- not conceal or destroy information or evidence related to the alleged cartel.

Beneficiaries of leniency

31 | Can the company apply for leniency for itself and its individual officers and employees?

As stated under the Guidelines on Active Cooperation, in the case of an application by an undertaking, all managers and employees of the applicant who admit to the existence of the infringement and enter into active cooperation may benefit under the Regulation. Therefore, it is not necessary for an undertaking to submit a list of managers and employees who can benefit from immunity from or a reduction in fines.

Accordingly, there are no barriers for previous managers and employees benefiting from an application filed by an undertaking that was their employer.

INVESTIGATION

Commencement of investigation

32 | How is an investigation into a suspected breach of competition law started?

Within 10 days following the case handlers submitting a preliminary inquiry report to the Board of the Turkish Competition Authority (TCA), the TCA convenes in order to evaluate the information obtained and make a decision and decides on whether or not to open an investigation.

If the TCA decides that an investigation shall be conducted, it designates the rapporteur or rapporteurs who shall conduct the investigation under the supervision of the head of the department concerned. The TCA notifies the parties concerned of the investigations initiated by it within 15 days of issuing the decision of the initiation of an investigation and requests that the parties submit their first written pleas within 30 days.

In order to initiate the first written plea period granted to the parties, the TCA is required to send this notification letter to the parties concerned, accompanied by adequate information as to the type and nature of the claims.

Please note that the TCA may order a full-fledged investigation without conducting a preliminary inquiry.

Limitation period

33 | What are the limitation periods for investigation of competition infringements?

As competition law infringements are classified as misdemeanours, the Turkish Misdemeanor Act's eight-year limitation period applies.

On the other hand, the TCA must conclude investigations within six months. If it is deemed necessary, the TCA may grant a six-month extension, on a one-time-only basis.

Information-gathering powers

34 | What powers does the competition authority have to gather information?

The TCA has the following information-gathering powers.

Requests for information

The TCA may send information request(s) (RFIs) to undertakings under scrutiny, other undertakings or public institutions to obtain additional information regarding the investigated undertakings' activities or regarding the sector in general. Constructing the responses to an RFI is important, as these responses generally shape the opinions of the TCA.

Conducting dawn raids

The TCA has the right to conduct dawn raids on the undertakings' premises to obtain further information over the investigated matter. Overseeing the inspections and managing this process should be carried out carefully to prevent misunderstandings and fines that may arise from hindering the dawn raids.

Evaluating additional comments by the undertakings

Undertakings may submit additional comments and arguments to the TCA's attention, where necessary, with a view to providing them with a clear picture of the matter under scrutiny. Additional comments are particularly important to prevent misunderstandings that may negatively affect the TCA's opinion over the investigated matters, as well as the collected documents.

Dawn raids

35 | For what types of infringement will the competition authority launch a dawn raid? Are there any specific procedural rules for dawn raids?

The TCA frequently carries out dawn raids regardless of the nature of the alleged infringement. Unannounced on-site inspections are used both at the pre-investigation and investigation stages.

The TCA may search the premises of the undertaking subject to investigation. The TCA officials do not need authorisation from a court, but they must obtain authorisation from the TCA's president defining the scope of the investigation. Those decisions indicate that an administrative fine will be imposed if incorrect information is provided. Authorisation from the court is required only if the undertaking concerned refuses to allow the dawn raid.

The TCA's officials may, under article 15 of Law No. 4054 on the Protection of Competition (the Competition Law):

- enter the undertakings' premises and means of transport;
- access electronic devices, such as computers, mobile phones and laptops;
- examine and take copies of the books and other business records; and
- ask any representative or employee for explanations about facts or documents.

The TCA's officials are entitled to fully examine the computers, including all deleted items

Dawn raids – rights and obligations

36 | What are the company's rights and obligations during a dawn raid?

During a dawn raid, an undertaking is obliged to allow the TCA's officials to access the premises and conduct the investigation if a formal decision is made by the TCA. There is no such obligation in the absence of a formal decision, and the undertaking concerned may refuse the inspection without specifying any particular reason. If the undertaking voluntarily decides to allow the investigation, it will not be able to change its decision later. If a formal decision has been made by the TCA, undertakings must allow the inspectors to conduct the dawn raid. Those concerned are obliged to provide copies of information, documents, books and other instruments requested by TCA representatives.

During the inspection, the undertaking is responsible for preventing interference with the data being inspected as well as with the environment where the data is stored. Employees must provide full and active support in matters regarding IT systems when so requested by the TCA's officials. For example, the undertaking will be under certain obligations, such as providing information about the software and hardware related to the information technologies used, providing system administrator privileges, enabling remote access to the email

accounts of the undertaking's personnel, isolating computers and servers from the network environment, limiting the access of users to their corporate accounts, and restoring backed-up corporate data.

Refusal to cooperate

37 What are the penalties and other consequences for refusing to cooperate with the authorities during an investigation?

Refusal to cooperate with the TCA may take the form of obstructing the inspection, making it difficult to perform the on-site inspection, or failing to duly respond to information requests. For obstructing an on-site inspection, the TCA may impose an administrative fine of 0.5 per cent of the undertaking's annual gross revenues of the preceding financial year, whereas, in the case of failing to respond duly to information requests or providing false information, the TCA may impose an administrative fine of 0.1 per cent of the undertaking's annual gross revenues of the preceding financial year.

One of the most significant decisions of the TCA regarding the obstruction of a dawn raid is the *TTNET* decision No. 13-46/601-M taken in 2013, where it was found that an employee deleted certain documents during a dawn raid, which led to the TCA imposing a fine of 15,512,258 lira, corresponding to 0.5 per cent of the TTNET's turnover.

Additionally, the TCA through its *Unilever* decision No. 19-38/584-250 dated 7 November 2019, ruled to impose an administrative fine against Unilever amounting to 0.5 per cent of its turnover in Turkey in 2018 due to hindrance of the on-site inspection. One of Unilever's employees stated that they needed to consult Unilever Global for permission regarding the examination, and the permission required for the inspection through eDiscovery was obtained at 5.45pm, delaying the inspection by approximately 7.5 hours.

In its *Siemens* decision No. 19-38/581-247 in November 2019, when the TCA's case handlers intended to carry out an inspection within specific dates and using keywords concerning the email accounts of all of Siemens employees during a dawn raid, Siemens employees stated that Siemens Global's permission would be required to initiate the inspection. Since the authorisation was not obtained during the on-site inspection, the inspection was not carried out on that day. However, Siemens contacted the TCA six days after the on-site inspection and stated that Siemens is searching for ways to grant the TCA access so it may perform the requested inspection and proposed a procedure for an on-site inspection. The on-site inspection was eventually conducted on 2 October 2019. The TCA concluded that the benefit expected from the on-site inspection could not be obtained because of the inability to use eDiscovery, even though the email accounts of the company employees, which were considered to be related to the file subject claims, were not available. In this respect, the TCA imposed two different administrative fines on Siemens: the first being by 0.5 per cent of Siemens' annual gross revenue that was generated by the end of 2018 financial year, and the second being 0.05 per cent of Siemens' annual gross revenue generated in 2018 for each of the 12 days between 3 October 2019 (the date following the day of conduct) and 15 October 2019 (the date of enabling the TCA to conduct an on-site inspection) (12 multiplied by 0.05 per cent of the annual gross revenue).

Moving back to failing to respond duly to information requests, for instance, in its *Poultry* decision No. 19-12/155-70 in March 2019, the TCA resolved to impose fines corresponding to 0.1 per cent of the previous year's turnover on Bakpiliç for failure to provide requested information and documentation as part of an investigation and Tad Piliç for providing false or misleading information.

These companies did not violate the Competition Law, in essence.

SETTLEMENT

Settlement mechanisms

38 Is there any mechanism to settle, or to make commitments to regulators, during an investigation?

A settlement mechanism was introduced within the amendments made to Law No. 4054 on the Protection of Competition (the Competition Law) in 2020.

After initiating an investigation, the Turkish Competition Authority (TCA) may, on the request of parties concerned or on its own initiative, start the settlement procedure, considering the procedural benefits that may arise from a rapid resolution of the investigation process and the differences in opinion concerning the existence and scope of the infringement.

Before issuing a notification of the investigation report, the TCA may come to a settlement with the undertakings, and associations of undertakings, under investigation that acknowledge the existence and scope of the infringement. As a result of the settlement procedure, a discount of up to 25 per cent may be applied to an administrative fine.

Where an investigation concludes with a settlement, the parties to the settlement may not take the administrative fine and the provisions of the settlement text to court. In other words, the parties to the settlement cannot appeal the settlement in the administrative court. Although the settlement mechanism is envisaged in article 43 of the Competition Law, the secondary legislation related to the settlement mechanism has not been adopted yet.

Impact of compliance programme

39 What weight will the authorities place on companies implementing or amending a compliance programme in settlement negotiations?

The TCA's case law on settlement procedures is not clear yet, but it may be expected to take existing competition compliance programmes (CCP) into consideration during a settlement procedure.

Corporate monitorships

40 Are corporate monitorships used in your jurisdiction?

No, corporate monitorships are not used in Turkey.

Statements of facts

41 Are agreed statements of facts in a settlement with the authorities automatically admissible as evidence in actions for private damages, including class actions or representative claims?

Although the TCA's case law on settlement procedures is not clear yet, agreed statements of facts in a settlement with the TCA might be admissible as evidence in actions for private damages.

UPDATE AND TRENDS

Recent developments and future reforms

42 What were the key cases, decisions, judgments and policy and legislative developments of the past year? Are there any proposals for competition law reform in your jurisdiction?

During the covid-19 outbreak, the Turkish Competition Authority (TCA) has been focussing on innovation-driven industries, and price hikes and market distortions, both of which are in line with the global trends. Technology has advanced rapidly and penetrated all sectors, which has

increased the share of intelligence-intensive sectors in global competition and made innovation an important parameter of competition. Furthermore, the 'internet of things' and 'big data' have gained importance in many sectors, especially in segments close to consumers, such as retail, and have become one of the determinants of market power.

On 30 January 2020, the TCA announced that it has started working on the Digitalization and Competition Policy Report. Furthermore, to ensure that the TCA can act proactively by closely monitoring the digital economy and potential competition law violations that platforms can create, additional responsibilities are included for the Strategy Development Department Presidency of the TCA. Also, the TCA has initiated sector inquiries concerning e-marketplace platforms and online advertising.

In addition, 2020 was also a special year for competition law in Turkey, due to the amendments made to Law No. 4054 on the Protection of Competition (the Competition Law), which modified or clarified certain legal standards and also introduced new mechanisms (ie, the de minimis principle, significant impediment of effective competition test, behavioural and structural remedies for anticompetitive conduct, and settlement and commitment mechanisms). In addition to those, the TCA has published its Guidelines on the Examination of Digital Data during On-Site Inspections and communiqués on de minimis principle and commitment mechanism. Moreover, the TCA has opened the draft regulation on settlements to public consultation.

The TCA's most significant recent cartel enforcement case was against Novartis and Roche. The TCA fined Novartis' and Roche's local businesses a total of 278.5 million lira for colluding to promote the use of the eye treatment Lucentis over Altuzan, a cheaper alternative. The case has a high degree of significance due to its international nature. Indeed, similar practices by Novartis and Roche had led to them being fined a total of €182.6 million by the Italian Competition Authority and a total of €444 million by the French Competition Authority. Furthermore, a separate investigation into agreements between Novartis and Roche for eye treatment drugs has been conducted by the Spanish Competition Authority.

The other important cartel enforcement of the TCA was related to autogas (the common name for liquefied petroleum gas (LPG) when used as a fuel in vehicles and generators) and fuel stations in a province of Turkey after WhatsApp messages were accepted as evidence disclosing infringement. While assessing WhatsApp messages, the TCA determined that the membership of any employee of an undertaking in a WhatsApp group of undertakings under investigation demonstrates the involvement of that particular undertaking in the violation. Although the TCA defined the violation as a cartel, it refrained from imposing hefty fines due to the low-profit margins of the stations in the autogas LPG and fuel market.

In terms of restrictive horizontal agreements, the TCA's most high-profile case was related to the market for voluntary insurance for big projects with capacities for high risk (including project financing). In consequence of the investigation, the TCA fined Allianz, Dubai Starr, Eureko, HDI and Sompo Japan for information exchange in certain coinsurance businesses.

There was a hybrid case against postal and cargo companies that includes allegations of horizontal and vertical restriction of competition. After the investigation, the TCA ruled that customer restriction practices were a vertical restriction and imposed fines on DHL, TNT, UPS, and Yurtiçi Kargo for a total of approximately 61 million lira for customer restriction. There were 36 cargo companies involved in the investigation, but the TCA concluded that only four had infringed competition due to the vertical nature of their practices.

When we turn to vertical restrictive agreements, one of the most significant cases was against Baymak, a manufacturer and distributor of heating systems. The TCA imposed an administrative monetary fine of 26,813,704.10 lira against Baymak for violating article 4 of the Competition Law (which is the equivalent of article 101(1) of the Treaty on the Functioning of the European Union) through resale price maintenance practices, restrictions on online sales and non-compete obligations with durations exceeding five years.

Moreover, the TCA maintained its tough stance against resale price maintenance and imposed a record fine on fuel distributors. The TCA asserted that some documents and findings obtained during the on-the-spot inspections carried out at the premises of the concerned undertakings created suspicion that those undertakings determined the pump sales prices of their dealers.

Furthermore, when the Energy Market Regulatory Authority was notified it compared the minimum and ceiling prices of the concerned undertakings and their dealers and determined that the pump sale prices set by the dealers were nearly equal to the recommended prices set by the concerned undertakings. Consequently, in March 2020, the TCA imposed a fine amounting to approximately 1.5 billion lira in total on four undertakings operating in the fuel distribution sector in Turkey: BP, OPET, PO and Shell.

On the other hand, abuse of dominance by undertakings was also on the TCA's radar. The TCA concluded two investigations into services offered by Alphabet Inc's Google subsidiaries. In the first one, the TCA decided that Google violated article 6 of the Competition Law by disadvantaging competitors offering shopping comparison services, complicating the activities of competing undertakings, and distorting competition in the shopping comparison services market. The TCA consequently issued a fine amounting to 98 million lira. On 29 July 2020, Google announced that starting from 10 August 2020, it will be removing shopping ads (or 'the Shopping Unit') from its search pages in Turkey. According to the tech giant, the decision was taken because of the uncertainties surrounding the fate of the remedy package that it proposed to comply with the TCA's decision.

In the second case, the TCA fined Google 196.7 million lira, after ruling that Google was abusing its dominance in the general search services market. The main allegations in the decision were that Google hindered the activities of other undertakings by abusing its

ACTECON

M Fevzi Toksoy
fevzi.toksoy@actecon.com

Bahadır Balkı
bahadir.balki@actecon.com

Ertuğrul Can Canbolat
ertugrul.canbolat@actecon.com

Caner K Cesit
caner.cesit@actecon.com

Çamlıca Köşkü – Tekkeci Sokak
No. 3-5 Arnavutköy – Beşiktaş
34345 İstanbul
Turkey
Tel: +90 212 211 5011
Fax: +90 212 211 3222
www.actecon.com

dominant position through its updates to general search services and unfairly using AdWords. The TCA ruled that Google had placed paid advertisements on top of search results that did not clearly carry the characteristics of advertising. In addition to the monetary fine, Google is obliged to submit remedial measures to terminate its anticompetitive behaviour and ensure fair competition within six months upon the receipt of the reasoned decision and must continue to present compliance measures and annual reports for five years.

Conventional markets, such as port management services, were also investigated by the TCA. After the port management services investigation, the TCA decided that the operator of Antalya Port was abusing its dominant position by imposing excessive prices in the container handling market. Therefore, the TCA imposed a fine amounting to approximately 12 million lira.

Coronavirus

43 What emergency legislation, relief programmes and other initiatives specific to your practice area has your jurisdiction implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Turkey's government has not issued any emergency legislation, relief programmes or other initiatives to address the pandemic.

On the other hand, the TCA has attached an enormous significance to the effects of the covid-19 pandemic on both industries and consumers. In this context, the TCA has made announcements in which it has warned market players that price increases and market distortions within the supply chain will not be tolerated.

In addition, the TCA is closely monitoring the whole economy and did not hesitate to take further action when suspicions related to violation of competition arose. The TCA used its powers to protect the competitive market structures after the spread of the covid-19 pandemic.

Other titles available in this series

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Business & Human Rights
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Defence & Security Procurement
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
Drone Regulation
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
Healthcare M&A
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Litigation Funding
Loans & Secured Financing
Luxury & Fashion
M&A Litigation
Mediation
Merger Control
Mining
Oil Regulation
Partnerships
Patents
Pensions & Retirement Plans
Pharma & Medical Device Regulation
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public Procurement
Public-Private Partnerships
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
Sports Law
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Technology M&A
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

lexology.com/gtdt

an LBR business

ISBN 978-1-83862-636-5